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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WINSTON SMITH; JANE DOE I; and JANE
DOE II, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.; AMERICAN CANCER
SOCIETY, INC.; AMERICAN SOCIETY OF
CLINICAL ONCOLOGY, INC.;
MELANOMA RESEARCH FOUNDATION;
ADVENTIST HEALTH SYSTEM; BJC
HEALTHCARE; CLEVELAND CLINIC; and
UNIVERSITY OF TEXAS - MD
ANDERSON CANCER CENTER,

Defendants.

CASE NO. 5:16-cv-01282-EJD

**NOTICE OF MOTION AND MOTION
FOR APPOINTMENT OF INTERIM CO-
LEAD COUNSEL; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: August 18, 2016
Time: 9:00 a.m.
Crtrm.: 4, 5th Floor
Judge: Hon. Edward J. Davila

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, on August 18, 2016, at 9:00 a.m., before Judge Edward J. Davila of the Northern District of California, Plaintiffs Winston Smith, Jane Doe I, and Jane Doe II will and hereby do move for an order appointing interim class counsel under the proposed structure set forth herein.

This Motion is based on the Notice of Motion, the accompanying Memorandum of Points and Authorities, and the Declarations of Jay Barnes, Barry R. Eichen, Amy Gunn, Stephen M. Gorny, Paul R. Kiesel and Andrew Lyskowski, the papers on file in this matter, the arguments of counsel, and any other matter the Court wishes to consider.

DATED: June 7, 2016

KIESEL LAW LLP

By: /s/ Jeffrey A. Koncius

Paul R. Kiesel

Jeffrey A. Koncius

Nicole Ramirez

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<i>Four in One Co. v. SK Foods</i> No. 2:08-cv-03107-MCE, 2009 U.S. Dist. LEXIS 28657 (E.D. Cal. Mar. 19, 2009)	2
<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> 267 F.R.D. 291 (N.D. Cal. 2010)	2
<i>Paraggua v. LinkedIn Corp.</i> No. 5:12-cv-03088-EJD, 2012 U.S. Dist. LEXIS 123226 (N.D. Cal. Aug. 29, 2012)	2
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs filed this class action against Defendants Facebook, Inc., American Cancer Society, Inc., American Society of Clinical Oncology, Inc., Melanoma Research Foundation, Adventist Health System, BJC Healthcare, Cleveland Clinic, and University of Texas - MD Anderson Cancer Center for privacy violations. As detailed below, since its filing on March 15, 2016, this action has received significant media attention. Plaintiffs' counsel suspect that the privacy violations alleged in the Complaint are widespread and will result in the filing of numerous related actions nationwide. As a result, Plaintiffs move this Court for an order appointing interim class counsel pursuant to Federal Rule of Civil Procedure 23(g). The proposed leadership structure will promote efficiency while advancing "the just, speedy and inexpensive determination" of the action and any related actions. Fed. R. Civ. P. 1.

II. BACKGROUND

This action seeks damages and injunctive relief for privacy violations by Facebook on the websites Cancer.org, Cancer.net, Melanoma.org, ShawneeMission.org, BarnesJewish.org, ClevelandClinic.org, MDAnderson.org, and other health care and hospital websites as maintained by those health care providers (hereafter, the "health care Defendants"). Plaintiffs' cancer and other sensitive health-related Internet communications with these medical websites were divulged to Facebook by health care Defendants and acquired by Facebook along with the Plaintiffs' personally-identifiable information. In addition, Facebook acquired, tracked, and used the Plaintiffs' sensitive medical information collected through medical websites and the Facebook website for purposes of direct marketing. The disclosures, tracking, and use of their sensitive medical information for direct marketing were all done without Plaintiffs' knowledge or consent in violation of their privacy rights under federal and state law.

Defendant Facebook failed to disclose to its users that it (1) tracks, intercepts, and acquires user communications in violation of other websites' privacy policies, (2) tracks, intercepts, and acquires user communications with medical websites, including the websites of medical providers subject to HIPAA and other medical privacy laws, and (3) uses the personal information it gathers

1 from its users, including sensitive medical information, to place its users into medical categories
2 for purposes of direct marketing.

3 The health care Defendants' actions in divulging sensitive personally-identifiable medical
4 information about the Plaintiffs to Facebook without the Plaintiffs' knowledge or consent violated
5 the Privacy Policies at each website at issue in this case.

6 **III. LEGAL STANDARD**

7 Pursuant to Federal Rule of Civil Procedure 23(g)(3), this Court may "designate interim
8 counsel to act on behalf of a putative class before determining whether to certify the action as a
9 class action." "Although Rule 23(g)(3) does not provide a standard for appointment of interim
10 counsel, the [C]ourt may consider the factors contained in Federal Rule of Civil Procedure
11 23(g)(1)." *Paraggua v. LinkedIn Corp.*, No. 5:12-cv-03088-EJD, 2012 U.S. Dist. LEXIS 123226,
12 at *6 (N.D. Cal. Aug. 29, 2012); *Douglas v. Haier Am. Trading, LLC*, No. 5:11-cv-02911-EJD,
13 2011 U.S. Dist. LEXIS 91695, at *4 (N.D. Cal. Aug. 17, 2011); *Bernal v. Netflix, Inc.*, No. 5:11-
14 cv-00820-EJD, 2011 U.S. Dist. LEXIS 89903, at *8 (N.D. Cal. Aug. 12, 2011). Under Federal
15 Rule of Civil Procedure 23(g)(1), the court considers:

16 (i) the work counsel has done in identifying or investigating potential claims in the
17 action; (ii) counsel's experience in handling class actions, other complex litigation,
18 and the types of claims asserted in the action; (iii) counsel's knowledge of the
applicable law; and (iv) the resources that counsel will commit to representing the
class.

19 *See also* Manual for Complex Litigation (Fourth) ¶ 21.271. The court may also "consider any
20 other matter pertinent to counsel's ability to fairly and adequately represent the interests of the
21 class." Fed. R. Civ. P. 23(g)(1)(B). While "[n]o single factor should necessarily be determinative
22 in a given case," Fed. R. Civ. P. 23 Advisory Committee Note (2003), the experience and ability
23 of the firms to handle class action litigation becomes crucial when all firms have undertaken
24 independent investigations into the underlying facts and legal claims. A court may appoint more
25 than one firm to act in a leadership capacity. *Four in One Co. v. SK Foods*, No. 2:08-cv-03107-
26 MCE, 2009 U.S. Dist. LEXIS 28657, at *14 (E.D. Cal. Mar. 19, 2009) (appointing two firms as
27 co-lead counsel); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 316 (N.D. Cal.
28 2010) (appointing two firms as co-lead counsel).

1 **IV. ARGUMENT**

2 **A. THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS INTERIM**
 3 **CLASS COUNSEL**

4 The Court should appoint Plaintiffs' counsel as interim class counsel pursuant to Rule
 5 23(g)(3). Since its filing on March 15, 2016, Plaintiffs' action has received significant media
 6 attention.¹ Plaintiffs' counsel suspect that the privacy violations alleged in the Complaint are
 7 widespread and will result in the filing of numerous related actions. The broad scope and inherent
 8 complexity of this action necessitate a sound case management structure entered early in the
 9 litigation so that the litigation is streamlined from its onset. Therefore, Plaintiffs propose a detailed
 10 leadership structure for the putative class, which includes an Executive Committee led by four

11

¹ As of the date of this filing, the following articles have been published relating to this case:

12 AJ Agrawal, What The Big Brother Lawsuit Against Facebook Means For Data-Driven Advertising (May
 13 18, 2016, 4:21 PM) <http://www.forbes.com/sites/ajagrawal/2016/05/18/what-the-big-brother-lawsuit-against-facebook-means-for-data-driven-advertising/#7a84f88658bd>

14 Martha Neil, Facebook capture of medical info from web searches by users violates HIPAA and other laws,
 15 suit says (April 13, 2016), http://www.abajournal.com/news/article/facebook_capture_of_medical_info_from_web_searches_by_users_violates_hipaa

16 Kerry Flynn, Facebook Tracking Cancer Sites for Advertising Purposes, Lawsuit Alleges (April 12, 2016),
 17 <http://www.ibtimes.com/facebook-tracking-cancer-sites-advertising-purposes-lawsuit-alleges-2352084>

18 Quinn Novak, Smith et al v. Facebook, Inc. et al: Plaintiffs Allege Facebook is Mining Private Medical
 19 Information to Generate Profit (April 6, 2016), <http://jolt.richmond.edu/index.php/smith-et-al-v-facebook-inc-et-al-plaintiffs-allege-facebook-is-mining-private-medical-information-to-generate-profit/>;

20 Carrie Pallardy, Lawsuit Claims Facebook Mined PHI from Websites of Cleveland Clinic, MD Anderson
 21 Cancer Center & More for Advertising Profit, Becker's Health IT & CIO Review (Mar. 23, 2016),
<http://www.beckershospitalreview.com/healthcare-information-technology/lawsuit-claims-facebook-mined-phi-from-websites-of-cleveland-clinic-md-anderson-cancer-center-more-for-advertising-profit.html>

22 Neil Versel, Suit Claims Facebook Mines Private Cancer Data, MedCity News (Mar. 23, 2016, 1:21 AM),
<http://medcitynews.com/2016/03/facebook-cancer-data/>

23 Emma Woollacott, Man Called Winston Smith Files Lawsuit Against 'Big Brother' Facebook (March 19,
 24 2016), <http://www.forbes.com/sites/emmawoollacott/2016/03/19/man-called-winston-smith-files-lawsuit-against-big-brother-facebook/#58ebaacd6f6b>

25 Bethy Squires, Facebook is Mining Private Data from Cancer Organizations, New Lawsuit Alleges,
 26 Broadly (Mar. 18, 2016, 4:15 PM), https://broadly.vice.com/en_us/article/facebook-is-mining-private-data-from-cancer-organizations-new-lawsuit-alleges

27 Nicholas Iovino, Facebook Mines Data Off Cancer Sites, Users Say, Courthouse News Service (Mar. 16,
 28 2016, 7:05 PM), <http://www.courthousenews.com/2016/03/16/facebook-mines-data-off-cancer-sites-users-say.htm>

firms: Barnes & Associates, Eichen, Crutchlow, Zaslow & McElroy, LLP, The Gorny Law Firm, LC, and Kiesel Law LLP; and a Plaintiffs' steering committee consisting of those firms on the Executive Committee, as well as The Simon Law Firm, P.C., and Bergmanis Law Firm, L.L.C. (collectively, "Proposed Interim Class Counsel").

B. PROPOSED INTERIM CLASS COUNSEL WILL BEST BE ABLE TO REPRESENT THE PUTATIVE NATIONWIDE CLASS

Proposed Interim Class Counsel are well-qualified to represent and assist the putative class. As detailed below, Proposed Interim Class Counsel (1) investigated the claims for one year before filing this action, (2) have extensive experience in class action law, (3) have been on the forefront of Internet privacy cases, and (4) have the resources to vigorously litigate this matter. In sum, Proposed Interim Class Counsel are more than able to represent the class fairly and adequately.

1. Proposed Interim Class Counsel have performed significant work in investigating and prosecuting this case.

The Court should consider the work that Proposed Interim Class Counsel have already performed in investigating and prosecuting this case. Fed. R. Civ. P. 23(g)(1)(A). The Advisory Committee Notes (2003) provide that the investigatory and analytical efforts of counsel are an important factor in appointing lead class counsel.

Proposed Interim Class Counsel have filed a comprehensive 92-page Complaint on behalf of Plaintiffs and the putative class, detailing their allegations and claims in this case. ECF No. 1. This is the first filed case against Facebook and health-care Defendants alleging the type of privacy violations suffered by Plaintiffs and the putative class. However, this action was brought only after an extensive investigation into the salient factual and legal issues. Indeed, the investigation concerning Defendants pre-dated the filing of the Complaint by more than one year. During that time, Proposed Interim Class Counsel engaged in a meticulous and exhaustive investigation concerning how Internet users' sensitive medical information is divulged to, and acquired, tracked, and used by Facebook for direct marketing purposes. Declaration of Jay Barnes ("Barnes Decl.") at ¶ 4; Declaration of Barry R. Eichen ("Eichen Decl.") at ¶ 4; Declaration of Stephen M. Gorny ("Gorny Decl.") ¶ 5; Declaration of Paul R. Kiesel ("Kiesel Decl.") ¶ 3;

1 Declaration of Andrew S. Lyskowski (“Lyskowski Decl.”) ¶ 4; Declaration of Amy C. Gunn
 2 (“Gunn Decl.”) at ¶ 4. Proposed Interim Class Counsel also met with potential plaintiffs, and have
 3 allocated a significant amount of time and money through the hiring of knowledgeable consultants
 4 and working with specialists to develop this case. Barnes Decl. ¶ 4; Eichen Decl. ¶ 4; Gorny Decl.
 5 ¶ 5, Ex. A; Kiesel Decl. ¶ 3; Lyskowski Decl. ¶ 4; Gunn Decl. ¶ 4.

6 As a result, Proposed Interim Class Counsel are uniquely situated to efficiently prosecute
 7 this case based on the information they have already received and reviewed, their familiarity with
 8 the claims, and their contacts with affected class members.

9 **2. Proposed Interim Class Counsel have the experience necessary to serve**
 10 **as interim class counsel and have extensive knowledge of the applicable**
 11 **law.**

12 Proposed Interim Class Counsel’s extensive experience in class action law, combined with
 13 their knowledge, experience, and expertise in similar cases, demonstrate their unique
 14 qualifications to serve as lead counsel. Courts throughout the country have appointed Proposed
 15 Interim Class Counsel and their attorneys as class counsel in hundreds of class actions, including
 16 many in this district. Barnes Decl. ¶¶ 3, 6, Ex. A; Eichen Decl. ¶¶ 2, 5-6; Gorny Decl. ¶ 3, Ex. A;
 17 Kiesel Decl. ¶¶ 2, 6, Ex. A; Lyskowski Decl. ¶ 3, Ex. A; Gunn Decl. ¶ 3, Ex. A. Many of these
 18 cases have gone to trial or reached settlement, and Proposed Interim Class Counsel have
 19 collectively recovered hundreds of millions of dollars for aggrieved class members and consumers
 20 generally. *Id.* Class members in this case will benefit by the appointment of counsel who have the
 21 experience of taking cases through trial, as well as devising fair settlement structures and claims
 22 protocols in similar cases should these cases resolve before trial.

23 Furthermore, Proposed Interim Class Counsel have vast experience in this area of the law.
 24 In a similar case against Facebook pending before this Court, *In re: Facebook Internet Tracking*
 25 *Litig.*, No. 5:12-md-02314 EJD, dealing with internet privacy and many causes of action that have
 26 been alleged in this case, members of Proposed Interim Class Counsel have been actively
 27 involved. Indeed, Stephen M. Gorny, Andrew S. Lyskowski, and Barry R. Eichen were previously
 28 appointed to the Plaintiffs’ interim steering committee and Paul Kiesel as interim Liaison Counsel.
 See Order Granting Plaintiffs’ Motion to Consolidate and Appoint Interim Class Counsel, *In re:*

1 *Facebook Internet Tracking Litig.*, No. 5:12-md-02314 EJD, ECF No. 19. Additionally, Plaintiffs
 2 in that case recently and successfully moved this Court to appoint Jay Barnes, who has been
 3 actively involved there and on the forefront of Internet privacy cases all over the country, to the
 4 Plaintiffs' interim steering committee and to appoint Kiesel Law LLP to it as well. *See* Order
 5 Amending Consolidation Order, *In re: Facebook Internet Tracking Litig.*, No. 5:12-md-02314
 6 EJD, ECF No. 118. So too, in that case, Plaintiffs' counsel have opposed two motions to dismiss,
 7 and are therefore very familiar with the legal issues and arguments that are anticipated to be made
 8 in this action. Therefore, a similar appointment is warranted here, given the extensive experience,
 9 skill, and expertise in this area of law.

10 Not only are Proposed Interim Class Counsel highly competent lawyers, but they have
 11 developed a particular expertise in privacy actions through extensive investigation of the industry,
 12 consultation with industry professionals, and the prosecution of similar cases. Barnes Decl. ¶ 3, 6,
 13 Ex. A; Eichen Decl. ¶¶ 3, 6; Gorny Decl. ¶¶ 3, 5, 7, Ex. A; Kiesel Decl. ¶¶ 5, 6, Ex. A; Lyskowski
 14 Decl. ¶¶ 3, 6, Ex. A; Gunn Decl. ¶ 4. Proposed Interim Class Counsel's experience is described in
 15 further detail below, and in the accompanying Declarations and the firms' resumes.

16 *a. Barnes & Associates*

17 Barnes & Associates has extensive experience in privacy class actions. In addition to this
 18 case, Barnes & Associates has been actively involved with and appointed to the Plaintiffs' steering
 19 committees in the following privacy cases:

20 *In re: Facebook Internet Tracking Litigation*, MDL 02314. Jay Barnes of Barnes &
 21 Associates is actively involved and was appointed to the Plaintiffs' interim steering
 22 committee, in this pending multi-district litigation concerning the rights of
 consumers in Internet privacy and Defendants' unauthorized interceptions and
 tracking of user communications.

23 *In re: Google Cookie Placement Consumer Privacy Litigation*, MDL 2358. Jay
 24 Barnes of Barnes & Associates was appointed a member of the Plaintiffs' Steering
 25 Committee for this pending multi-district litigation, involving the rights of
 consumers in Internet privacy and Defendants' unauthorized interceptions and
 tracking of user communications. In December 2014, Barnes successfully argued
 the appeal of the district court's decision.

26 *In re: Nickelodeon Consumer Privacy Litigation*, MDL 2443. Jay Barnes of Barnes
 27 & Associates was appointed a member of the Plaintiffs' Steering Committee for
 28 this pending multi-district litigation, involving the rights of consumers in Internet

1 privacy and Defendants' unauthorized interceptions and tracking of video viewing
2 and communications of minor children.

3 Barnes Decl. ¶ 3, Ex. A. Prior to these consumer privacy cases, Jay Barnes represented a consumer
4 class against LegalZoom, Inc. on claims relating to the unauthorized practice of law in the state of
5 Missouri, a case which was resolved favorably for the plaintiffs prior to trial but after extensive
6 discovery. *Janson v. LegalZoom.com, Inc.* (Case No. 2:10-CV-04018-NKL, W.D. Mo.) In
7 addition to his work as an attorney, Barnes serves as a state representative in the Missouri House
8 of Representatives, where he is chairman of the House Committee on Government Oversight and
9 Accountability. Barnes Decl. ¶ 2, Ex. A.

10 *b. Eichen Crutchlow Zaslow & McElroy, LLP*

11 The lawyers at Eichen Crutchlow Zaslow & McElroy, LLP ("ECZM") have significant
12 experience handling both State and Federal class actions. They have lead, co-lead and participated
13 as members of various Plaintiff Steering Committees on a wide variety of mass torts and class
14 actions. ECZM's experience in these matters include: Co-Lead Counsel, *In re Schering-Plough*
15 *Corp.*; Co-Lead Counsel, *Intron/Temodar Consumer Class Action*; Steering Committee Member,
16 *Vytorin Litigation*; Steering Committee, *Phen-Fen Drug Litigation*; Lead of NJ State Steering
17 Committee, *In re Rezulin Drug Litigation*; *In re Plasma Derivative Blood Protein Therapies*
18 *Antitrust Litigation*; *In re Wellpoint, Inc. Out-of-Network "UCR" Rates Litigation*; *Lozinak v. The*
19 *Pep Boys -- Manny Moe & Jack*; *Dyer v. Wakefern Food Corp.*, *Chandra v. Metro Honda*
20 *Consumer Fraud Litigation*; Co-Lead Counsel, *Chaudri v. OSRAM Sylvania Consumer Fraud*
21 *Litigation*; Steering Committee, *In re Google Inc. Cookie Placement Consumer Privacy*
22 *Litigation*; and Steering Committee, *In Re Nickelodeon Consumer Privacy Litigation*.

23 Members of the firm have participated in precedent-setting consumer class action
24 litigation, including *Ting v. AT&T*, 182 F. Supp.2d 902 (N.D. Cal. 2002), 319 F.3d 1126 (9th Cir.
25 2003) (interaction of Federal Arbitration Act and doctrine of unconscionability regarding
26 arbitration clauses prohibiting consumer class actions), as well as *Toppings v. Meritech Mortgage*
27 *Services*, 569 S.E.2d 149 (W.Va. 2002), and *Ex rel. Dunlap*, 567 S.E.2d 265 (W.Va. 2002). The
28 firm has also been among those approved by the New Jersey Attorney General as qualified to

1 represent the State against polluters in Natural Resource Damages Super Fund litigation. ECZM
2 Decl. ¶ 7, Ex. A.

3 ECZM's experienced team of attorneys have worked on this case from its inception, and
4 will continue to staff this matter through its conclusion. ECZM Decl. ¶ 4–8, Ex. A.

5 *c. The Gorny Law Firm, LC*

6 The Gorny Law Firm has experience in privacy class actions. In addition to this case, The
7 Gorny Law Firm has been actively involved with and appointed to the Plaintiffs' Steering
8 Committee in:

9 *In re: Facebook, Inc. Internet Tracking Litigation*, MDL 02314. Steve Gorny is
10 actively involved and has served on the Steering Committee since the outset of the
11 litigation concerning the rights of consumers in Internet privacy and Defendants'
12 unauthorized interceptions and tracking of user communications.

13 *In re: Google Cookie Placement Consumer Privacy Litigation*, MDL 2358. Steve
14 Gorny's prior firm was a member of the Steering Committee in this litigation.
15 Steve Gorny has worked with attorney Jay Barnes with regards to strategy and
16 planning of motions and arguments in this case.

17 Steve Gorny has been involved in several consumer class actions involving cell phone use
18 and charges. These cases were nationwide involving consumers from more than 25 states. Chris
19 Dandurand of the firm has also had extensive experience in consumer class action litigation and
20 has worked on more than one dozen such matters.

21 *d. Kiesel Law LLP*

22 The attorneys at Kiesel Law LLP ("KL") have wide-ranging experience in the areas of
23 complex actions in both State and Federal Courts. They have held lead, liaison or co-lead positions
24 in several mass tort and class action cases including, but not limited to:

25 *Clergy Cases I, II, & III*, California JCCPs 4286, 4297, and 4359. KL was
26 appointed Liaison Counsel on behalf of hundreds of survivors of childhood sexual
27 abuse against the Dioceses of Orange, Los Angeles, San Diego, and Fresno. The
28 cases resolved for over \$1 billion.

In re: Avandia Marketing, Sales Practices and Product Liability Litigation, MDL
1871. The Plaintiffs' steering committee for this multi-district litigation selected
Paul Kiesel to serve as Co-Lead Counsel for the Plaintiffs' steering committee in
March 2011. This national litigation involves numerous federal lawsuits brought
against defendant GlaxoSmithKline PLC, manufacturer of the onetime
"blockbuster" type 2 diabetes drug Avandia, which has been pulled from the
shelves in Europe, India, and New Zealand, and which is only available in the

United States as a drug of last resort. KL represents the County of Santa Clara in its claim for the return of all moneys used to purchase this toxic drug.

In re: Facebook, Inc. Internet Tracking Litig., MDL 02314. KL was appointed to the interim steering committee for this pending multi-district litigation, involving the rights of consumers in Internet privacy and Defendants' unauthorized interceptions and tracking of user communications.

In re: Wright Medical Technology, Inc., Conserve Hip Implant Products Liability Litig., MDL 2329. In May 2012, KL was appointed Co-Lead Counsel in this federal coordinated action arising out of injuries sustained as a result of implantation of defective metal-on-metal hip devices. A recent trial verdict on the first Bellwether case resulted in a 7 figure verdict.

Nader v. Capital One Bank (U.S.A.), N.A., Case No. 12-CV-01265-DSF (C.D. Cal.); *Stone v. Howard Johnson International, Inc.*, Case No. 12-CV-1684-PSG (C.D. Cal.); *Greenberg v. E-Trade Financial Corporation*, Case No. BC360152 (Los Angeles Superior Court); *Mount v. Wells Fargo Home Mortgage, Inc.*, Case No. BC395959 (Los Angeles Superior Court); *Raymond v. Carsdirect.com*, Case No. BC256282 (Los Angeles Superior Court). Businesses must provide the familiar admonition that telephone calls with consumers "may be recorded for quality assurance and training purposes" in order to comply with California law, which requires the consent of all parties to a telephone conversation before it may be recorded. In these cases, KL represented classes of California individuals whose calls were recorded without their knowledge or permission.

Kiesel Decl. ¶ 6, Ex. A. KL leads an experienced team of attorneys that have worked on this case from its inception, and that will continue to staff this matter through its resolution. Kiesel Decl. ¶¶ 3, 6, Ex. A.

e. Bergmanis Law Firm, L.L.C.

Bergmanis Law Firm has extensive experience in nationwide Internet privacy cases. Andrew S. Lyskowski of Bergmanis Law Firm. has been appointed to the Plaintiffs' steering committees in the following privacy case:

In re: Facebook, Inc. Internet Tracking Litigation, MDL 02314. Andrew S. Lyskowski was appointed to the Plaintiffs' Steering Committee for this pending multi-district litigation, involving the rights of consumers in Internet privacy and Defendants' unauthorized interceptions and tracking of user communications.

Mr. Lyskowski was also actively involved in a similar case against Google, *In re: Google Cookie Placement Consumer Privacy Litigation* MDL 2358, which concerned the rights of consumers in Internet privacy and Defendants' unauthorized interceptions and tracking of user communications.

1 Mr. Lyskowski previously originated the first in a series of Drivers Privacy Protection Act
 2 cases, which were resolved prior to trial in Missouri. *See Roberts v. The Source for Public Data*,
 3 Case No. 2:08-cv-04167-NKL (W.D. Mo.), and prior to private practice, served as an assistant
 4 attorney general for the State of Missouri. Since the filing of this action, Mr. Lyskowski has
 5 conducted extensive research in both the development and application of the governing laws as
 6 well as an overview of existing case law in the area. Additionally, he has experience in computer
 7 hardware, software, and effective usage of the Internet in areas that intersect with our actionable
 8 laws and will be helpful in both crafting pleadings and discovery.

9 *f. The Simon Law Firm, P.C.*

10 The attorneys at The Simon Law Firm have wide-ranging experience in the areas of
 11 complex actions in both State and Federal Courts. They have held lead, liaison or co-lead positions
 12 in several mass tort and class action cases including, but not limited to:

13 *In re: Blue Buffalo Co., Ltd., Marketing and Sales Practices Litigation*, MDL 2562
 14 (E.D. Mo. Dec. 2015). The Simon Law Firm served as lead counsel in consumer
 fraud class action and obtained a multi-million dollar settlement.

15 *Woods v. QC Financial Services Inc., d/b/a/ Quik Cash*, Case No. 12SL-CC00318
 16 (St. Louis County Cir. Ct. Feb. 2012). The Simon Law Firm served as co-counsel
 in this predatory lending class action and obtained a multi-million dollar settlement
 via class arbitration.

17 *Hooper v. Advance America*, No. 2:08-cv-4045 (Mo. W.D. Nov 2010). The Simon
 18 Law Firm served as co-counsel in this predatory lending class action settlement that
 yielded several million dollars in refunds, debt reduction, and overall debt relief.

19 *Titus v. Burns & McDonnell Inc.*, No. 4:09-cv-117 (Mo. W.D. Sept. 2011). The
 20 Simon Law Firm served as co-counsel in this class action for ERISA benefits.

21 *Jost v. Commonwealth Land Title Insurance Co.*, No. 4:08-734-CDP. The Simon
 22 Law Firm acted as co-counsel for this multi-state FLSA collective action.

23 The Simon Law Firm also acted as lead counsel in class actions against multiple Missouri
 24 cities in regard to the unconstitutionality of red light cameras. *See Brunner v. City of Arnold*, 427
 25 S.W.3d 201 (Mo. App. E.D. 2013); *Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. App.
 26 W.D. 2013); *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013); and *Unverferth*
 27 *v. City of Florissant*, 419 S.W.3d 76 (Mo. App. E.D. 2013). The Simon Law Firm is also currently
 28 serving as the appointed interim class counsel in *In re: Emerson Electric Co. Wet/Dry Marketing*

1 *and Sales Practices Litigation*, MDL No. 2382, a consumer protection case that is ongoing in the
 2 United States District Court for the Eastern District of Missouri.

3 In addition to The Simon Law Firm's extensive class action experience, Ms. Gunn has
 4 personally served on the Steering Committees for mass tort actions for defective transvaginal
 5 mesh in *In re: Pelvic Mesh/Gynecare Litigation*, BER-L-11575-14, New Jersey state court (Case
 6 No. 291), *In re: American Medical Systems, Inc. Litigation*, Case No. 27-CV-11-39363,
 7 Minnesota state court, and *Aldridge, et al. v. American Medical Systems, Inc., et al.*, Case No.
 8 1222-CC10166, Missouri state court.

9 **3. Proposed Interim Class Counsel have the staffing and resources**
 10 **necessary to aggressively prosecute this case.**

11 The Court should also consider, in part, the resources counsel will commit to representing
 12 the Class. Fed. R. Civ. P. 23(g)(1)(A)(iv). A class is fairly and adequately represented where
 13 counsel are qualified, experienced, and generally able to conduct the litigation on its behalf.
 14 *Wiener v. Dannon Co.*, 255 F.R.D. 658, 672 (C.D. Cal. 2009).

15 Combined, the offices of Proposed Interim Class Counsel have forty-one attorneys who are
 16 qualified and able to represent the putative class. Barnes & Associates is a law firm of three
 17 lawyers specializing in privacy rights. Barnes Decl. Ex. A. ECZM has ten attorneys in offices in
 18 New Jersey. Eichen Decl. Ex. A. The Gorny Law Firm has three attorneys in its Missouri office.
 19 Gorny Decl. Ex. A. Kiesel Law, LLP has 10 attorneys in its Beverly Hills office. Kiesel Decl. Ex.
 20 A. Bergmanis Law Firm has three attorneys in its Missouri office. Lyskowski Decl. Ex. A. The
 21 Simon Law Firm has twelve attorneys in its Missouri office. Gunn Decl. Ex. A.

22 In addition to their lawyers who have developed national and international reputations for
 23 top quality work, these firms also maintain staffs with dozens of paralegals, investigators,
 24 litigation support staff, and others. Proposed Interim Class Counsel also have the financial
 25 resources necessary to represent the putative class, and will commit the resources necessary to
 26 litigate this case vigorously to its conclusion. *See* Barnes Decl. ¶ 7; Eichen Decl. ¶ 8; Gorny Decl.
 27 ¶ 8; Kiesel Decl. ¶ 7; Lyskowski Decl. ¶ 8; Gunn Decl. ¶ 7. Proposed Interim Class Counsel have
 28 already committed the full resources of their firms, including the time and efforts of their senior

attorneys and financial resources expended in hiring consultants and industry insiders, to perform legal research and fact investigation in this case, and will continue to do so. Accordingly, Proposed Interim Class Counsel easily satisfy the adequacy requirement of Rule 23(g).

4. Proposed Interim Class Counsel will work cooperatively with all other interested counsel to achieve the best result possible for the putative class.

The Court may also consider any other factors that are relevant to the appointment of lead counsel. Fed. R. Civ. P. 23(g)(1)(B). Here, one important factor is Proposed Interim Class Counsel's demonstrated ability to work efficiently and cooperatively with other counsel who are expected to file their own cases. This case may eventually involve plaintiffs represented by several firms. Therefore, it is important that lead counsel give voice to all interested parties and be capable of working cooperatively to forge consensus when necessary. In this regard, and by way of example, Jay Barnes of Barnes & Associates has been appointed to the Plaintiffs' steering committees in privacy cases, including *In re: Facebook Internet Tracking Litigation*, *In re: Google Cookie Placement Consumer Privacy Litigation*, and *In re: Nickelodeon Consumer Privacy Litigation*. Barnes Decl. ¶ 3, Ex. A. Similarly, KL was appointed Liaison Counsel on behalf of hundreds of survivors who filed claims against the Dioceses of Orange, Los Angeles, San Diego, and Fresno in the *Clergy Cases I, II, & III*. Kiesel Decl. ¶ 6, Ex. A. Further, as demonstrated in their firm resumes, Proposed Interim Class Counsel have worked in a leadership capacity on countless nationwide cases involving a number of firms with demonstrated success. Barnes Decl. Ex. A; Eichen Decl. Ex. A; Gorny Decl. Ex. A; Kiesel Decl. Ex. A; Lyskowski Decl. Ex. A; Gunn Decl. Ex. A.

Thus, by appointing Proposed Interim Class Counsel, the Court will be assured that they have the knowledge and experience necessary to include any other potentially interested parties and act upon consensus views, thereby minimizing conflicts that can otherwise hamper complex, nationwide litigation such as this.

V. CONCLUSION

Proposed Interim Class Counsel have expended significant time and independent effort developing this case and are fully committed to reaching a favorable resolution for aggrieved

1 consumers. They have the experience and resources necessary to serve as Lead Counsel,
2 particularly given their successful resolution of similar cases. For all these reasons, the Court
3 should appoint Proposed Interim Class Counsel as Interim Lead Class Counsel.

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